Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 81.

HARRY J. JAQUITH, TRUSTEE, APPELLANT,

vs.

CLARENCE W. ROWLEY ET AL.

BRIEF FOR THE APPELLEES.

This is an appeal from a judgment of the district court of the United States for the district of Massachusetts, dismissing the "petition in equity" for want of jurisdiction.

Nine distinct choses in action were involved in the "petition in equity," each of which required a trial in the court or courts where the bankrupt might have prosecuted them if proceedings in bankruptcy had not been instituted. These choses in action are—

(1.) The cause of action in Thayer *vs.* Franklin, an action of contract in the Middlesex superior court (Record, p. 1).

(2.) The cause of action in Flanders *vs.* Franklin, an action of contract in the Middlesex superior court (Record, p. 1).

(3.) The cause of action in Franklin *vs.* Flanders, a petition to vacate judgment brought by this appellant in the Middlesex superior court (Record, pp. 2, 3).

(4.) The cause of action in Franklin *vs.* Thayer, a petition to vacate judgment brought by this appellant in the Middlesex superior court (Record, pp. 2, 4).

(5.) The claim of Thayer against the surety Silsby on Franklin's bail bond (Record, p. 1).

(6.) The claim of Flanders against the surety Silsby on Franklin's bail bond (Record, p. 1).

(7.) The claim of the surety Silsby upon the money he held to indemnify him in case Franklin avoided the bail bond in the Thayer case (Record, p. 1).

(8.) The claim of the surety Silsby upon the money he held to indemnify him in case Franklin avoided the bail bond in the Flanders case (Record, p. 1).

(9.) Claims by the trustee in bankruptcy against one of the parties and against counsel for costs incurred by the trustee in proceedings begun by him in a State court and decided adversely to him after full hearing (Record, pp. 2, 3, 4, 5).

None of the above matters are within the jurisdiction of the bankruptcy court. All must be determined in the courts

where, but for the bankruptcy, the bankrupt might have prosecuted them.

Bardes *vs.* Hawarden Bank, 178 U. S., 524.
Mitchell *vs.* McClure, 178 U. S., 539.
Hicks *vs.* Knost, 178 U. S., 541.
Bryan *vs.* Bernheimer, 181 U. S., 188.
Mueller *vs.* Nugent, 184 U. S., 1.

The filing by Thayer of her proof of claim, reserving her rights in the security, did not operate to give the district court jurisdiction to determine the value of her security. That question remained to be determined in the State courts.

Bankrupt Law, section 57, *h*.

The appellees, believing this appeal is groundless and vexatious, pray for costs.

CLARENCE W. ROWLEY,
For the Appellees.